IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 28035 of 2006(K)

OPIP.2/1998 of I ADDL.SUB COURT,TRIVANDRUM

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PETITIONER:

ANNAMMA ALEXANDER,
WIFE OF ALEXANDER, THOTTUMUKHATHU HOUSE,
PONGUMMOODU, THIRUVANANTHAPURAM.

BY ADV. SRI.VAKKOM N.VIJAYAN
SMT.VINITHA PRASANNAN
SRI.P.ANIYAN
SRI.A.S.SACHIN
SMT.REENA.C.STEPHENSON

RESPONDENTS:

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1. P. RAMACHANDRAN NAIR,
T.C.3/522, G.S.NAGAR, T.K.D. ROAD, MUTTADA,
THIRUVANANTHAPURAM.

2. THULASI RAMACHANDRAN, -DO- -DO-.

3. RAJAPPAN PILLAI,
T.C.3/575, -DO- -DO-.

4. RAMACHANDRA KURUP,
T.C.3/523, -DO- -DO-.

5. B. LEELAMMA, HARIKRISHNA,
T.C.29/1038, PALKULANGARA, THIRUVANANTHAPURAM.

6. V.G. CHACKO,
VALIAMANNIL, VALIPLACKAL, KURAVANKONAM,
KOWDIAR, THIRUVANANTHAPURAM.

7. MALAYIL BANKERS,
PAZHAYA ROAD, MEDICAL COLLEGE,THIRUVANANTHAPURAM.

8. MALAYIL BANKERS AND INVESTORS, -DO--DO-.

9. MALAYIL GROUP FUNDS, -DO- -DO-.

10. MALAYIL FINANCIAL ENTERPRISES,-DO--DO-.

11. MALAYIL GROUP FINANCE, -DO- -DO-.

12. MALAYIL GROUP FINANCE CONSOLIDATION,
-DO- -DO-.

13. MALAYIL BANKERS & INVESTMENTS -DO- -DO-.

14. MALAYIL BANKERS (H.O),
PRINCE THOMAS, NO.1., AAKKULAM,THIRUVANANTHAPURAM.

15. GEORGE VARGHESE,
MALAYIL HOUSE, NALANCHIRA.

16. OFFICIAL RECEIVER, THIRUVANANTHAPURAM. D.C.TVM,
NASEEM SHUKUR KHAN.

BY ADV. SRI.L.MOHANAN FOT R15
SMT.LIGEY ANTONY
SRI.M.V.KIRAN MOHAN
SRI.V.N.ACHUTHA KURUP (SR.) FOR R16.
SRI.B.S.SWATHY KUMAR
SRI.BINDU SREEKUMAR
SRI.K.G.RENGANATH
SRI.R.S.KALKURA FOR R1 TO R6

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 28035 of 2006(K)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE JUDGMENT DTD. 20.12.2002 IN I.P.NO.2/1998 OF THE 1ST ADDL. SUB JUDGE, THIRUVANANTHAPURAM.

EXT.P2: COPY OF THE APPEAL MEMORANDUM IN A.S.NO.65/03, DISTRICT COURT, THIRUVANANTHAPURAM, DTD. 25.3.2003.

EXT.P3: COPY OF THE APPEAL MEMORANDRUM NO.60/2003 FILED BY THE RESPONDENTS 7 TO 15.

EXT.P4: COPY OF THE PETITIONER I.A.NO.1930/2006 IN A.S.NO. 60/03 DTD. 18.7.2006.

EXT.P5: COPY OF REPORT DTD 28.7.2006 FILED BY THE 16TH RESPONDENT.

EXT.P6: COPY OF THE APPLICATION FILED BY THE RECEIVER.

EXT.P7: COPY OF THE REPORT OF THE CEREIVER.

EXT.P8: COPY OF THE PROCLAMATION DTD. 13.10.2006.

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RESPONDENT'S EXHIBITS:

EXT. R16-A: COPY OF THE ORDER IN I.A.NO.1930/06 IN A.S.NO.60/03 DTD. 30.09.06 OF THE 1ST ADDITIONAL DISTRICT JUDGE, THIRUVANANTHAPURAM.

EXT.R16-B: C0PY OF THE PRELIMINARY STATEMENT IN A.S.NO.60/2003 OF THE 1ST ADDITIONAL DISTRICT COURT, THIRUVANANTHAPURAM DTD. 19.10.2006.

EXT.P16-C: COPY OF THE ORDER IN I.A.NO.2650/06 IN A.S.NO.60/03 DTD. 20.10.2006 OF THE 1ST ADDITIONAL DISTRICT JUDGE, THIRUVANANTHAPURAM.

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// TRUE COPY //

P.S. TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 28035 OF 2006

Dated this the 12th day of July, 2007

JUDGMENT

Ext.P8 notification for sale of immovable property issued by the official liquidator in administration of the immovable properties belonging to the debtors sought to be declared as insolvent in insolvency proceedings of 2/98 of Sub Court, Thiruvananthapuram pending in appeal before the First Additional District Court, Thiruvananthapuram in appeal, AS No.65/03 and two other appeals, is under challenge in this writ petition under Article 227 to the extent it pertains to the third item of property mentioned therein namely 45 cents of land in Survey No.123/5/1 of Pangappara Village. The writ petitioner is one of the appellants in AS No.65 of 2003 which is one of the three appeals presently pending against Ext.P1 judgment of the Sub Court in IP NO.2/98. Ext.P2 is copy of the appeal memorandum in AS No.65 and Ext.p2 will show that the petitioner is the third appellant and her husband Sri.T.G.Alexander is the 10th appellant. Under Ext.P1 judgment the insolvency court has declared respondents 1 to 25 therein a partnership firm by name Malayil Bankers, its sister concerns and partners, as insolvents. The petitioner Smt.Annamma Alexander and

her husband and children are persons who are declared insolvent under Ext.P1. Ext.P3 is copy of appeal memorandum, AS No.60 of 2003 filed by some of the persons who were declared insolvent in Ext.P1 and in Ext.P3 M/s.Malayil Bankers and its sister concern along with others are the appellants. The petitioner points out that the ground urged by the appellants in Ext.P3 appeal was that they have sufficient assets to discharge the entire liability and the insolvency court went wrong in declaring them as insolvents. They filed Ext.P4 IA before the appellate court offering 7 items of immovable properties to be sold by the court, so that the proceeds can be utilized for discharging the debts claimed by the creditors. The petitioner submits that nobody opposed Ext.P4 and therefore the court allowed Ext.P4 and the 7 items mentioned in Ext.P4 were ordered to be sold. Ext.P5 produced is report submitted by the official receiver the 16th respondent. As per Ext.P5 the aggregate liability owed by the insolvents to the petitioners in the IA is Rs.7,55,000/-. While their liability to the other creditors is Rs.11,25,54,084/-. The petitioner points out that sale of the properties ordered to be sold was being taken up by the receiver in a most irregular and capricious manner. Valid offers were being rejected by the receiver without any rhyme or reason. Copy of Ext.P6 application filed by the

receiver is relied on to show that nearly 5 crores of rupees have already come into the funds of the receiver. Petitioner relies on Ext.P7 report of the receiver to show that item No.2 property in the list shown in Ext.P4 was sold by the receiver in public realizing an amount of Rs.12 crores and 13 lakhs. Thus according to the petitioner amounts necessary for the payment of all creditors is already realized by the receiver and yet he has issued Ext.P8 notifying item No.3 and the other two items mentioned therein for sale. Ext.P8 is described as a malafide and vindictive measure taken by the receiver who has been angered by the successive complaints filed against the receiver by the petitioner and hence the writ petition challenging Ext.P8, particularly sale of item No.3 in Ext.P8 on various grounds.

2. The receiver has filed a detailed counter affidavit. It is submitted that the sale pursuant to Ext.P8 notification is conducted on the basis of Ext.R16-A order of the learned District Judge dt.30.09.06 in IA No.1930/06. The above order was passed on consent. Also produced along with the counter affidavit of the receiver is Ext.R16-B statement filed by the receiver before the court going by which the total liability of the insolvents is Rs.23,22,23,292/-, while the total amount realized is Rs.16,92,91,842.77. It is stated that in the meanwhile

Income Tax Department has got itself impleaded and raised a claim of Rs.40,79,46,718/- towards the arrears of income tax due from the insolvents. The petitioner's husband, Sri.T.G.Alexander filed IA NO.2650/06 seeking a stay of sale of item No.3 pursuant to Ext.P8. The District Court took all relevant matters into account and declined stay. Ext.R16(c) is the copy of the order of the District Court. The counter affidavit points out that item No.3 belongs to insolvent No.1 in Ext.P1 who sold the same as per document No.2128/97 of Kazhakkoottam Sub Registry to Sri.P.G.Varghese and Ancy Alexander who respectively are the brother in law and daughter of the petitioner. It is pointed out that even after the adjudication order was passed, the insolvent themselves were in possession of some of the properties surrendered by them to the Insolvency Court and were themselves taking yield from the properties. This aspect of the matter was brought to the notice of the District Court by the Receiver who filed IA No.724/04 in AS No.38/04 and IA No.788/04 in AS No.60/04 praying for a direction to the appellants not to obstruct the receiver from collecting the yield from the properties. Filing of these petitions, which are even now pending has enraged the petitioner and her fellow insolvents. The counter affidavit goes on to state that the receiver has not committed any illegality and

has only faithfully discharged her duties as the court receiver and that sale of the 3rd item in Ext.P8 is absolutely necessary.

3. Very elaborate submissions were addressed before me by Sri.Vakkom N. Vijayan, learned counsel for the petitioner and I have also heard the submissions of Sri.R.S.Kalkura, learned counsel for respondents 1 to 5, Sri.L.Mohanan, learned counsel for the 15th respondent and Smt.Bindu Sreekumar, learned counsel for the 16th respondent-receiver. I was taken by the learned counsel through the various documents placed on record.

4. Having considered the rival submissions I do not find any warrant for invocation of the supervisory jurisdiction of this Court under Article 227 in this Writ Petition. It is pursuant to R16(a) order of the District Judge that the sale of item No.3 is taken up by the Official Receiver. In R16(a) the learned District Judge says that the order has been passed on the basis of agreement between the parties. Ext.R16 (a) is yet to be challenged. Though technically it may be correct to say that the petitioner Mrs.Annamma Alexander is not a party to Ext.R16 A it is to be noticed that all the three appeals AS No.60, 65 and 38 directed against Ext.P1 judgment were being simultaneously considered by the learned District Judge. The learned counsel have placed before me

copes of orders in IA No.2414/06 dt.23.09.06. The above IA is filed by the petitioner herself. Also placed before me by the learned counsel is copy of the order in IA No.1913/06 dt.01.09.06 and a copy of the order in IA NO.1930/06 dt.29.07.06. Ext.R16 order dt.20.10.06 is order passed on an application filed by the petitioner's husband Sri.Alexander. It is very difficult to accept the case of the petitioner that she was not having any notice regarding the approval granted by the District Judge for the sale of item No.3. Significantly the petitioner does not claim to be the owner of the property which is item No.3. In that view of the matter, the very locus standi of the petitioner to file this Writ Petition impugning the proposed sale of item No.3 is doubtful.

As already indicated, the District Judge has observed in Ext.16(a) that the order has been passed on the basis of agreement by the parties before him and Ext.R16 (a) is yet to be challenged. According to Mr.R.S.Kalkura, counsel for respondents 1 to 5, the counsel appearing for the parties in the three appeals pending before the District Judge have made endorsements on the petition and on the basis of such endorsements only the learned District Judge passed Ext.R16(a). Whatever that be, if the petitioner maintains even now that what the learned District Judge has written in the order regarding the agreement

between the parties is wrong, it is for the petitioner to move the District Judge himself by filing appropriate petition. At any rate, there is no warrant for invocation of the supervisory jurisdiction of this court. The Writ Petition will stand dismissed. However, the order of stay presently passed will continue for another three weeks from today.

PIUS C. KURIAKOSE, JUDGE

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